54TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 922.

THOMAS W. CAMPBELL.

MARCH 24, 1896.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. PUGH, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 5035.]

The Committee on War Claims, to whom was referred the bill (H. R. 5035) for the relief of Thomas W. Campbell, assignee of Miles Kelly, submit the following report:

That this claim was referred to the Court of Claims for a finding of facts under the terms of the Bowman Act by the Committee on War Claims on March 4, 1885. The Court of Claims has reported its findings to Congress, from which it appears that there is due the claimant the sum of $5,142.

The findings of the Court of Claims are hereto attached and made a part of this report.

The committee recommend the passage of the bill.

[House Mis. Doc. No. 25, Fifty-third Congress, second session.]

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, December 6, 1893.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the opinion and findings of the court filed in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. CHARLES F. CRISP,
Speaker of the House of Representatives.

[Court of Claims. Congressional, No. 355. Thomas W. Campbell, assignee of Miles Kelly, *v.* The United States.]

This case being a claim for supplies or stores alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion, the court, on a preliminary inquiry, finds that said Miles Kelly, the person alleged to have furnished such supplies or stores, or from whom the same are alleged to have been taken, was loyal to the Government of the United States throughout said war.

BY THE COURT.

Filed January 23, 1893.

[Court of Claims. Congressional, No. 355. (Decided November 20, 1893.) Thomas W. Campbell assignee, *v.* The United States.]

NOTT, J., delivered the opinion of the court:

This suit is a Congressional case for quartermaster stores and commissary supplies taken by military authority for the use of the Army in 1862, near Bowling Green, Ky. The peculiarity of the case is that it is brought by the purchaser of the claim in bankruptcy proceedings, and he, and not the owner of the property, appears as the only party in interest.

Three things concerning the assignment of claims against the Government may be regarded as well settled:

(1) That such claims as are choses in action upon which a suit can be maintained as a matter of legal right, if there be a jurisdiction, and in which "there is no element of a donation in the payment ultimately made" (Phelps *v.* McDonald, 99 U. S. R., 298), pass in bankruptcy and may be prosecuted by the assignee or by the purchaser in bankruptcy proceedings. (McKay's Case, 27 C. Cls. R., 422; Burke's, 13 id., 241.)

(2) That the title to what is known as abandoned and captured property not having been divested by capture, a claim for the proceeds in the Treasury as a cause of action which passes in bankruptcy, although no jurisdiction exists at the time in which it can be prosecuted. (Klein's Case, 13 Wall. R., 128; Erwin's, 97 U. S. R., 392.)

(3) That a mere expectancy, a claim founded on no legal right known to courts of law or equity, a claim which is but an appeal to the clemency of Congress for the redress of an injury, where there is no obligation on the part of the Government, and the granting of relief is purely a matter of legislative discretion, can not be regarded as property and does not pass in bankruptcy. Dockery's Case (26 C. Cls. R., 148); Heard *v.* Sturgis (146 Mass., 545); Taft *v.* Marisly (120 N. Y., 474); Brooks *v.* Ahrens (68 Maryland, 212); Kingsbury *v.* Mattocks (81 Maine, 310); Estate of Moore (26 C. Cls. R., 254); Heirs of Emerson *v.* Hall (13 Peters's R., 409, 415).

But it must be conceded that since the decision of the Supreme Court in Williams *v.* Heard (140 U. S. R., 529), overturning the concurrent decisions of four of the leading judicial tribunals of the State judiciary upon the same point, the last rule is not easy of application.

The subject of the action was one of the Alabama claims. The Supreme Court held that "the sum awarded by the tribunal of arbitration at Geneva, when paid, constituted a national fund, in which no individual claimant had any right, legal or equitable, and which Congress could distribute as it pleased," but that, "nevertheless, there was at all times a moral obligation on the part of the Government to do justice to those who had suffered in property."

What is a moral obligation on the part of the Government is a question in ethics which different consciences will answer in different ways, and which ordinarily the legislative power alone must determine. The Supreme Court in the same case say that a pension claim for disability is not assignable in bankruptcy; that it is "personal and not susceptible of passing by will or by operation of law." Yet no one will ever deny that if a government by statute should assure soldiers at the time of their enlistment that in the event of their incurring disabilities they should receive pensions, a moral obligation of the most unequivocal character would require that a fund be provided to pay those who suffered.

The real distinction between the Alabama claims and pension claims is probably this, that there the Government had in its custody a fund which was not morally its own, a fund which had been paid to it as an indemnity for depredations which had been committed by another belligerent on American commerce, the right of distribution being lodged in its discretion, and the rights of distributees being in abeyance until its discretion should be exercised. The court is careful to say that the rights so assignable in bankruptcy "were rights growing out of property." The exercise of the legislative discretion gave efficacy to existing rights; "but," says the court, "the act of Congress did not create the rights."

It may be urged that between the Alabama claims and those of loyal citizens in the seceded States a very strong analogy exists; that the last represent "rights growing out of property;" rights "not enforcible until after the passage of an act of Congress," but not created by the act; claims for private property taken for public use from loyal adherents of the Government concerning which "there was at all times a moral obligation on the part of the Government to do justice to those who had suffered in property." (Id., p. 541.)

While acknowledging the strength of the analogy, this court adheres to the opinion that a claim for property which was enemy's property in enemy's territory, and was taken by the military authorities in the exercise of the lawful right of a belligerent is not a claim possessing an attribute of property; that it was not a part of the bankrupt's estate, legal or equitable; but that it was like a pension claim, personal, dependent upon the individual loyalty of the individual sufferer and the clemency of Congress. With regard to claims for property taken in like manner from citizens

within the States which were never proclaimed hostile territory there may be a constitutional obligation.

In probably hundreds of the Congressional cases which have come into this court for quartermaster stores and commissary supplies taken for the use of the Army in the seceded States during the civil war, there have been assignments in bankruptcy. In such cases this court has uniformly regarded them as belonging to the third class, and the claim as still that of the former owner of the property; and Congress has uniformly given relief accordingly.

The claimant now asks the court to hold that a claim for such stores and supplies, taken for the use of the Army in the State of Kentucky, did pass to the assignee in bankruptcy and is now held by the purchaser in bankruptcy proceedings. Hence there is presented this question, whether there is a fourth class of claims, in which the original claimant whose property was appropriated by military authority in loyal territory possessed a legal right which could pass in bankruptcy, leaving him after assignment not entitled to seek redress. It is manifest that if a distinction can be made between this case and those of the third class before referred to, that distinction must rest upon the fact that this is a claim for property taken in a State which did not secede, and which can not be regarded as hostile territory, and in which property taken for the use of the Army shall not be regarded as enemy's property.

This case is not to be confounded when considering the facts with that of an alien in belligerent territory. It is true that where a citizen has gone into a foreign country and is possessed of property there, and war ensues between that country and his own, his property is stamped with the character of the country in which he has placed it, and he can assert no valid demand upon his own Government for either seizure or destruction. The facts are otherwise here. Here the property appropriated never was in a foreign country; the State never was stamped as hostile territory; the locus was within the United States military lines; the taking was in a manner deliberate and for public use, and in no sense incident to the ravages of war.

So far as cases arising in the seceded States are involved, the question seems clear. The Supreme Court has ascribed to the civil war the characteristics of international belligerency; all persons on one side of the line were enemies of all persons on the other; all persons in hostile territory must be regarded as hostile; the Government might enter into express contracts with the inhabitants as any belligerent power might, but no contract could be implied from the seizure, use, or destruction of property which the law regarded as hostile. Nevertheless there was a large class of persons in the seceded States who could say that they were hostile only in name; that in fact they were citizens and not enemies, adherents of the de jure and not of the de facto government. In the words of Chief Justice Waite (Young *v.* the United States, 97 U. S. R., 61), "While all residents within the Confederate territory were in law enemies, some were in fact friends." It is in this class whose claims may be transmitted by a Congressional committee under the Bowman Act, but they may be transmitted merely for investigation; no right of action is recognized by Congress nor known to the law.

It may be thought that if property was taken by the Army for use, and used in a State which never professed allegiance to the Confederate government, and which was never proclaimed to be in insurrection by the President, the act was a taking of private property for public use, from which a contract must be implied; that an action might have been brought on this implied contract, and consequently that the claim is now barred by the statute of limitations.

But the statute of limitations only runs against a right of action. The act 4th July, 1864 (13 Stat. L., p. 381), removed from the jurisdiction of this court all cases of property appropriated by the Army or Navy engaged in the suppression of the rebellion, and the statute extended to the loyal as well as to the insurrectionary States. The Supreme Court, moreover, has held that the term "appropriation," as used in the act, is a term of "the broadest import" extending to the acquisition of property by an express written contract. Filor's Case (9 Wall. R., 45). In such cases the statute of limitations did not attach to the claim, because it only attaches to demands which may be prosecuted in this court. In other words, there might be a constitutional right to redress, and a valid chose in action without there being a forum in which it could be prosecuted. Redress in such cases could be sought only through the Quartermaster-General, the Commissary-General, and Southern Claims Commission, or in Congress; and such claims now can only reach this court through the intervention of a House or committee of Congress under the Bowman or Tucker Act. "It is true," said Mr. Justice McLean, in 1839, "the payment of a debt can not be enforced against the Government by suit; but claims against it are not the less legal or equitable on that account." Heirs of Emerson *v.* Hall (13 Peters R., 409, 412).

The Supreme Court has also decided in the case before cited (Erwin's) that an equitable title to the proceeds of captured property passes to the assignee in bankruptcy, though there be no jurisdiction in which the purchaser can seek redress and

though the jurisdictional period for prosecuting such claims had expired at the time of the assignment.

Does the case of a loyal citizen in one of the nonseceding States come within the intent of this decision? Has he a valid demand of a legal character against the United States which will pass by assignment in bankruptcy, notwithstanding the fact that his claim is expressly excluded from the jurisdiction of this court because the manner of taking his property was by "appropriation" by the Army, and not through the medium of the civil authority of the Government?

In view of these legal distinctions the court is of the opinion that a difference exists between this case and those in which the property was seized in hostile territory, and that this difference makes it the duty of the court to report the case to Congress, it being at the same time understood that the claimant's right to relief in Congress is not adjudicated by the court and will remain a question of legislative discretion.

The order of the court is that the findings of fact now filed be reported to Congress with this opinion.

[Court of Claims. Congressional, No. 355. Thomas W. Campbell, assignee of Miles Kelly, *v.* The United States.]

STATEMENT OF CASE.

The claim in the above-entitled case for supplies or stores alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion was transmitted to the court by the Committee on War Claims, House of Representatives, on the 4th day of March, 1885.

C. D. Pennebaker, esq., appeared for claimant and the Attorney-General, by William J. Rannells, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

On a preliminary inquiry the court, on the 23d day of January, 1893, found that the person alleged to have furnished the supplies or stores, or from whom they were alleged to have been taken, was loyal to the Government of the United States throughout said war.

The case was brought to a hearing on its merits on the 11th day of April, 1893. The claimant in his petition makes the following allegations: That he is a citizen of the United States residing in the city of Louisville, in the State of Kentucky, and that he is the assignee (purchaser) at bankruptcy sale of a certain claim presented by Miles Kelly, of Warren County, Ky., who was adjudged bankrupt by the United States district court for the district of Kentucky, and that the claim hereinafter set out was purchased by your petitioner at bankruptcy sale; that said bankrupt resided during the late war of 1861 in the county of Warren and State of Kentucky, and that as assignee your petitioner has a claim against the United States for stores and supplies taken or furnished to the Army of the United States for army use at or near said bankrupt's premises at the different times and by various military officers, said property being reasonably worth at the time and place the value here given, that is to say:

For 1-horse ferryboat	$600.00
For 4,000 bushels wheat, at $1	4,000.00
For pasturage for 500 horses, 70 days, at $1.50	1,925.00
For 13 horses, at $150	1,950.00
For 6 mules, at $150	900.00
Total	9,375.00

The court, upon the evidence and after considering the briefs and arguments of counsel on both sides, makes the following

FINDINGS OF FACT.

I.

During the war for the suppression of the rebellion there was taken at different times by troops of the United States by military authority for the use of the Army, stores and supplies of the kind charged in the petition, from Miles Kelly, then a citizen of Warren County, Ky., the reasonable value of which when taken was the sum of $5,142, and for which no payment has been made.

II.

The above claim, with others, was presented by the said Miles Kelly, the person from whom the said stores and supplies were taken, to the Quartermaster-General. While pending before that officer Miles Kelly was adjudged bankrupt by the United States district court for the district of Kentucky, and made an assignment in bankruptcy, in which his claims against the United States, including the above, were entered as assets. The assignee collected the other claims, but the above claim in this case was sold by him at public auction in due form of law with other assets to the present claimant, Thomas W. Campbell, by whom it has been prosecuted. Miles Kelly is now deceased, and no person has appeared on his behalf or that of his personal representatives to prosecute his claim or to contest the present claimant's rights under the assignment.

BY THE COURT.

A true copy.
Filed November 20, 1893.
Test, this 6th day of December, 1893.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.